

USDOL/OALJ Reporter

[\*St. Laurent v. Britz Inc.\*](#), 89-ERA-15 (Sec'y Oct. 26, 1992)

Go to: [Law Library Directory](#) | [Whistleblower Collection Directory](#) | [Search Form](#) | [Citation Guidelines](#)

---

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: October 26, 1992  
CASE NO. 89-ERA-00015

IN THE MATTER OF

LEE H. ST. LAURENT,  
COMPLAINANT,

v.

BRITZ, INC., HYDRO NUCLEAR  
SERVICES, INC., AND OMAHA  
PUBLIC POWER DISTRICT,  
RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

On April 12, 1989, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R.D. and O.) in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA or the Act), 42 U.S.C. § 5851 (1988). In accordance with the regulations implementing the ERA, the case is now before me for issuance of the final decision. *See* 29 C.F.R. § 24.6 (1992).

Based on a review of the entire record, including the parties' briefs filed before the Secretary pursuant to a briefing schedule issued May 12, 1989, I find that the ALJ's factual findings are fully supported by the record. Furthermore, I agree that Complainant has not shown unlawful discrimination and that, therefore, his claim must be denied. I accept the ALJ's decision except as modified or supplemented below.

Initially, the ALJ addressed the jurisdictional issue raised by the parties and found that each Respondent was Complainant's "employer" for purposes of the ERA. R.D. and O. at 6-7. Complainant was employed by Respondent Britz to perform

---

[Page 2]

surveillance activities, *i.e.*, to monitor performance of radiological work at Respondent Omaha's Ft. Calhoun nuclear plant; to prepare procedures to address these concerns; and to work with Respondent Omaha's staff in implementing the procedures. Transcript (T.) at 29-30, 68, 112. Respondent Britz had contracted to provide these services to Respondent Hydro, who in turn was under contract with Respondent Omaha, the licensee of the Nuclear Regulatory Commission (NRC). T. at 13-14.

Respondent Britz concedes that Complainant was his employee, Respondent Britz, Inc.'s Brief received May 24, 1989, at Argument 1, and for the reasons expressed in *Hill v. Tennessee Valley Authority*, Case Nos. 87-ERA-23, 24, Sec. Dec. and Ord. of Rem., May 24, 1989, slip op. at 2, 5, 10, I find that Complainant also could pursue his claim against Respondents Hydro and Omaha. Jurisdiction here does not depend upon a direct employer-employee relationship, but derives from the construction and application of the statute.<sup>1</sup> Section 5851(a) of the ERA provides that "[n]o employer . . . may discharge any employee or otherwise discriminate against any employee . . . ." (Emphasis added.) It is not limited in terms to discharges or discrimination against any specific employer's employees, and under the circumstances presented here, where Complainant is a contract employee whose responsibility includes reporting safety concerns to the contractor and the licensee, the Act applies. *Hill*, slip op. at 3-5.

Against this background and as the ALJ found, Complainant clearly engaged in protected activity by internally raising complaints and questions about conditions at the nuclear plant constituting actual or reasonably perceived violations of the substantive provisions of the ERA. R.D. and O. at 8; *see Adams v. Coastal Production Operators, Inc.*, Case No. 89-ERA-3, Sec. Dec. and Ord. of Rem., Aug. 5, 1992, slip op. at 8-9, 9-10 n.5, and cases cited therein.<sup>2</sup> In view of Complainant's termination from employment within close temporal proximity of his protected activity, I conclude that Complainant met his initial burden to establish a prima facie case. *Couty v. Dole*, 886 F.2d 147, 148 (8th Cir. 1989); *Dartey v. Zack Co. of Chicago*, Case No. 82-ERA-2, Sec. Dec. and Fin. Ord., Apr. 25, 1983, slip op. at 8-9.

Complainant failed, however, to meet his ultimate burden of proving that the articulated reason for his discharge was pretextual. *See generally Dartey*, slip op. at 8. As discussed

---

[Page 3]

by the ALJ, the record contains no direct or circumstantial evidence tending to prove, in whole or in part, complainant's subjective charge that his termination was in retaliation for protected activity. R.D. and O. at 8-9.<sup>3</sup> To the contrary, the explanation given for Complainant's termination is entirely consistent with the great weight of the testimony adduced at the hearing and is inherently probable given the circumstances. Donald Neely

and James Ferguson, managers for Respondent Hydro, testified that the decision was based on Complainant's failure to follow instructions, inflexibility, and failure to be "diplomatic" in "interfacing" with the staff. T. at 97, 105, 107-108, 118. On the day Neely decided to terminate Complainant, Neely and Complainant had engaged in a "heated discussion" because Complainant refused to revise an assignment as instructed. T. at 103-106. Further, Ferguson described Complainant's attitude as condescending and testified that on several occasions shortly before the termination, he counseled Complainant to cease referring to various staff members as "rocket scientist" and "dumb s----." T. at 115-16. Complainant does not refute the testimony. Wayne Britz testified that Complainant had a prior history of interfacing "friction" and that he had received complaints about Complainant's interfacing problems in the past. T. at 84-85. Additionally, Complainant was one of twelve employees hired to perform similar functions, reporting safety concerns, and none of the others were discharged. T. at 67-68, 95-96.

Accordingly, the complaint IS DENIED.

SO ORDERED.

Lynn Martin  
Secretary of Labor

Washington, D.C.

#### **[ENDNOTES]**

<sup>1</sup>Consequently, it is not necessary for me to consider the applicability of the right to control and joint employer tests addressed by Respondents and the ALJ. *Hill*, slip op. at 7 n.2.

<sup>2</sup>The concerns raised by Complainant had already been pointed out as problems or deficiencies by the NRC and others, prior to Complainant's employment. Exhibit H-1; T. at 60, 72, 89-90.

<sup>3</sup>The dual motive analysis pressed by Complainant is, therefore, inapplicable. *See Dartey*, slip op. at 9.